

National Company Law Appellate Tribunal
Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 10 of 2020

(Arising out of Order dated 22nd November, 2019 passed by National Company Law Tribunal, New Delhi, Principal Bench, in CA – 1357(PB)/2019 in (IB) No.- 64 (PB)/2017).

IN THE MATTER OF:

CA Rita Gupta

(Erstwhile Resolution Professional in the matter of
Shilpi Cable Technologies Ltd.)

...Appellant

Versus

1. M/s. Shilpi Cable Technologies Ltd.

Through its Liquidator
Mr. Huzefa Fakhri Sitabkhan
IBBI/IPA-001/IP-P00031/2017-18/10115
Shilpi Cable Technologies Limited
1007-1012 Dalamal Tower,
Nariman Point, Free Press Journal Road,
Mumbai – 400021.

...Respondent No. 1

2. Committee of Creditors

Through its Liquidator
Mr. Huzefa Fakhri Sitabkhan
IBBI/IPA-001/IP-P00031/2017-18/10115
Shilpi Cable Technologies Limited
1007-1012 Dalamal Tower,
Nariman Point, Free Press Journal, Road,
Mumbai – 400021.

...Respondent No. 2

3. Mr. Huzefa Fakhri Sitabkhan Liquidator

IBBI/IPA-001/IP-P00031/2017-18/10115
Shilpi Cable Technologies Limited
1007-1012 Dalamal Tower,
Nariman Point, Free Press Journal, Road,
Mumbai – 400021.

...Respondent No. 3

For Appellant:

Mr. Sumant Batra, Advocate.

**For Respondent No. 1
& 3:**

**Mr. Puneet Singh Bindra, Ms. Simran Jeet and
Ms. Smiti Tewari, Advocates for R-1 & R-3.**

**For Respondent No. 1
& 2:**

Sanampreet Singh, Advocate for R-1 & R-2.

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. This Appeal is preferred by the erstwhile Resolution Professional ('RP') of 'M/s. Shilpi Cables Technologies Limited' ('Corporate Debtor') against the Impugned Order dated 22.11.2019 under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code'), passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), whereby the Adjudicating Authority disposed of CA-1357(PB)/2019 and directed the Appellant/RP to file her 'Claim' before the Liquidator as the 'Corporate Debtor' was under Liquidation. For ready reference, the Impugned Order is being reproduced as hereunder:

“This is an application principally for fixing the fee for the applicant namely Ms. Reeta Gupta, Interim Resolution Professional. A further prayer has been made to set aside the letter dated 14.09.2018, 25.09.2018 & 01 10.2018 and directing the CoC to pay for the period of appointment from 15.01.2018 to 11.06.2018. It is not disputed before us that in pursuance of Section 33 of the Insolvency & Bankruptcy Code CA-1144(PB)/2018 was accepted on 01.05.2019 and Liquidation of the corporate debtor was ordered as recommended by the CoC. The Liquidation proceedings are in progress and are pending before the Liquidator. Any claim by anyone would be competent before the Liquidator and if any adverse decision is given by the Liquidator then the provisions for filing an appeal has been made.”

2. For the sake of brevity, the facts of the case are not being detailed as the same has been submitted by both the parties.

3. Submissions of the Learned Sr. Counsel Mr. Sumant Batra appearing for the Appellant:

- It is submitted by the Learned Sr. Counsel that the Appellant served as an IRP of the 'Corporate Debtor' for a period of 30 days commencing

from 13.07.2017 and by virtue of the Order of the Learned Adjudicating Authority, the Appellant was appointed as the RP, which period of appointment continued from 13.07.2017 till her replacement on 07.06.2018, for a period totalling 10 months and 25 days.

- It is submitted that the appointment was made by the Adjudicating Authority and therefore the CoC was directed to decide the fees. It was only under the directions of the Adjudicating Authority that the Appellant discharged the functions as IRP and RP from 13.07.2017 to 07.06.2018. The CoC replaced the Appellant with the first Respondent which was confirmed by the Adjudicating Authority vide Order dated 07.06.2018.
- Despite the directions given by the Adjudicating Authority, the CoC failed to decide the fees and hence the Appellant filed an Application TA No. 428(PB)/2018 and the Adjudicating Authority vide Order dated 05.07.2018 directed the CoC to consider and pay the fees and expenses of the Appellant within two weeks.
- The CoC discussed the fee of the Appellant in the 7th CoC Meeting held on 13.07.2018, without giving the prescribed minimum period of Notice of 48 hours, the Appellant was asked to attend the CoC Meeting by Notice sent vide email dated 11.07.2018 at 07:52 PM and hence the Appellant on account of personal difficulty could not attend the Meeting at such short notice. In the said Meeting, the CoC approved the fee of the Appellant at an arbitrary sum of Rs.40,000/- p.m. as against Rs.10,00,000/- p.m. claimed by the Appellant and fixed out of pocket expenses at paltry sum of Rs.45,000/-, whereas the fees of the newly

appointed RP/R1 was fixed at Rs.16,000/- p.m., with no cap at expense.

- Pursuant to the fixation of this fee, R-1 also issued a letter dated 14.09.2018 demanding the Appellant to refund a wrongfully computed amount including the professional fee and expenses incurred by the Appellant for the period 13.07.2017 to 31.07.2017 which was paid by the management of the 'Corporate Debtor' in terms of the directions dated 01.08.2017 passed by this Appellate Tribunal.
- Two more letters dated 24.09.2018 and 01.10.2018 were issued demanding that the Appellant refund the purported expense fees and payment made to consultant. Aggrieved by the arbitrary fixation of fee and unwarranted recovery letters the Appellant filed CA 1208(PB)/2018 and CA No. 1268 (PB)/2018 before the Adjudicating Authority, which vide Order dated 11.02.2019, directed R-1 to reconsidered fees and take a reasonable decision.
- However again no decision was taken by the CoC in terms of the Order of the Adjudicating Authority and meanwhile on 01.05.2019, the 'Corporate Debtor' went into Liquidation.
- The Adjudicating Authority in the Impugned Order dated 22.11.2019 directed the Appellant to file a 'Claim' before a Liquidator.
- During the pendency of the Appeal, IBBI issued a Notice of Inspection dated 13.02.2020 and the Appellant responded vide Reply dated 19.02.2020 and a Draft Inspection Report dated 31.07.2020 against the Appellant was issued, for which, the Appellant submitted her Reply on 14.08.2020 to the Draft Inspection Report.

- It is submitted by the Learned Counsel that the Liquidator does not have the power to decide the fees of the IRP and the RP or to sit in Appeal over the decision of the CoC. The Liquidator has the power to only verify the 'Claims' of all the Creditors of the 'Corporate Debtor' and that the Appellant is not a Creditor of the 'Corporate Debtor', the Appellant's Application for determination of her fee cannot be determined by the Liquidator. The fees of the Appellant can only be decided by the Adjudicating Authority as the 'Corporate Debtor' is under Liquidation and the CoC is no longer existent.
- The CoC failed to comply with the direction diligently and also fixed the fee of the Appellant at an arbitrary rate. The CoC sought refund of Rs.24,12,875/- withdrawn by the Appellant during her tenure as IRP/RP and this amount also included Rs.12,42,875/- which is a fee of the Appellant and Rs.11,70,000/-, which is the fee paid to the advisor/professionals appointed by the Appellant. The CoC has no authority to seek refund of the expenses paid by the erstwhile Appellant pursuant to the Orders and directions of this Tribunal. The Appellant received a sum of Rs.1,51,928/- towards professional fee and expenses incurred by the Appellant for the purpose of publication of Form-A in various newspapers and other miscellaneous expenses for the period 13.07.2017 till 31.07.2017.
- It is submitted that the payment was made in compliance with the specific directions of this Appellate Tribunal and therefore the question of seeking the CoC approval for this payment did not arise. CoC was aware of this payment made by management of the 'Corporate Debtor'.

- The Appellant had put in a lot of effort to keep the enterprise as a 'going concern', manage the CIRP Process, collate 'Claims' and required the assistance of the advisors, for which the Appellant submitted a reasonable proposal to the CoC on 15.02.2018 for Rs.10,00,000/- p.m. However, the CoC did not approve the fees in the first Meeting held on 15.02.2018, nor did the CoC make any counter proposal of fees. Despite this, the Appellant continue to discharge her functions from 13.07.2017 to 07.06.2018 under the directions of this Tribunal.
- During the period of serving for approximately 11 months, the Appellant withdrew a sum of Rs.19,28,340/- on 26.03.2018, which was never objected to by the CoC. IDBI Bank out of 16 Members of the CoC raised some objections in the third CoC Meeting. Therefore, it was admitted that the CoC has approved the said withdrawal. Only once in the CoC Meeting held on 05.05.2018, the Appellant was requested not to make any further payments to the advisors.
- It has been 30 months since the Appellant has handed over the charge of the 'Corporate Debtor' to R-1 and almost 18 months since the Liquidation Order has been passed, however till date no reasonable fee has been fixed to pay the Appellant. The direction given by the Adjudicating Authority to file a 'Claim' before the Liquidator is erroneous as the fee of the RP is the 'CIRP Cost' and cannot be considered as a 'Claim' as defined under Section 3(6) of the Code. Learned Counsel placed reliance on the Judgement of the Hon'ble Supreme Court in **Civil Appeal No. 4065/2020 in 'Alok Kaushik' Vs. 'Mrs. Bhuvaneshwari Ramanathan & Ors.'**

4. Submissions of the Learned Counsel representing R-1 and R-3:

- During the pendency of the present Appeal, on a complaint filed by the 'Corporate Debtor' through R-3 against the Appellant, the IBBI vide Order dated 14.03.2022 passed strictures against the Appellant and banned the Appellant from undertaking any assignment for a period of 1 year.
- The Appellant was not holding office in the capacity of IRP/RP for the entire period starting from 13.07.2017 to 07.06.2018. The Appellant was appointed as IRP vide Order dated 13.07.2017 passed by the Adjudicating Authority and was holding the office till 01.08.2017, on which date, this Appellate Tribunal set aside the invocation of CIRP. Thereafter her appointment was revived again vide Order dated 15.01.2018 and 22.01.2018 passed by this Appellate Tribunal. The period 01.08.2017 to 14.01.2018 was excluded from the CIRP period however, the Adjudicating Authority mentioned in their Order that the Appellant is entitled to the fee for the whole period including the period excluded from the CIRP. In view of the same, the CoC considered the said excluded period as part of her tenure for calculating her fees.
- Between the period 13.07.2017 to 14.01.2018, the Appellant herself charged a fee of Rs.40,000/- p.m. and the same is borne out from invoice dated 19.03.2018 raised by the Appellant, that thereafter raise an invoice dated 19.03.2018 claiming a fee of Rs.10,00,000/- p.m. for the period 15.01.2018 to 14.03.2018.
- The Appellant had agreed to a fee of Rs.40,000/- p.m. and hence the CoC fixed her fee for the same amount. The fixation of the fees is a

prerogative of the CoC and the same was decided in accordance with Regulation 34 of the IBBI Regulations, 2016. The RP was invited to the Meeting scheduled for 13.07.2018, vide email dated 11.07.2018, but the Appellant only on 12.07.2018 replied her inability to attend the meeting. Accordingly, her fee was fixed at Rs.40,000/- plus GST p.m. and out of pocket expenses at Rs.45,000/- p.m.

- Learned Counsel placed reliance on the Judgement of this Tribunal in '*Sanjay Kr. Ruia*' Vs. '*Catholic Syrian Bank Ltd. & Anr.*', *Comp. App. (AT) (Ins.) No. 560/2018*, in support of their submission that it is only the CoC which has to determine the cost to be incurred and the fee to be paid to the RP.
- The Appellant should have filed her 'Claim' before the Liquidator and it is only the Liquidator who has the power to decide the Appellant's 'Claim'. In terms of Regulation 16 of the Liquidation Regulations, a person who claims to be a stakeholder is required to submit its 'Claim' as on the Liquidation commencement date.
- The Judgement relied upon by the Appellant in the case of '**Alok Kaushik**' (*Supra*) is not relevant as the issue involved is entirely different. The Judgement has no applicability and is only in the context of the fee of the professionals appointed by the Resolution Professional. Further, the CoC has already decided her fees for her tenure as directed by the Adjudicating Authority vide Order dated 05.07.2018 and secondly a Liquidator was appointed and thus the 'Claim' should be filed before the Liquidator and that there is no error in the Impugned Order passed by the Adjudicating Authority.

Assessment:

5. The main issues which arise in this Appeal are:

- Whether the Adjudicating Authority was justified in directing the Appellant to file her 'Claim' before the Liquidator as the 'Corporate Debtor' was under Liquidation.
- Whether the fee of an RP falls under the definition of a 'Claim' as defined under the Code.
- Whether the fee of a Resolution Professional is required to be fixed by CoC, failing which such decisions/determination is to be made by the Adjudicating Authority under the provisions of Section 60(5) of the Code read with Regulation 33(2) of the CIRP Regulation to fix the fees as payable to the RP.

6. The expression 'Insolvency Resolution Costs' as defined under Section 5(13) of the Code, Regulation 31 of the IRP Regulations, Regulation 33 which provides for the cost of the IRP, 'Resolution Professional Cost' as defined under Regulation 34, have been addressed to in great detail by the Hon'ble Supreme Court in '**Alok Kaushik' Vs. 'Mrs. Bhuvaneshwari Ramanathan & Ors.'**, **Civil Appeal No. 4065/2020**, wherein the Hon'ble Supreme Court has also addressed to the issue whether Regulation 34 of the IRP Regulation which defines 'Insolvency Resolution Process Cost' and includes the fees of professionals and the RP is a matter to be decided by the Adjudicating Authority. Paragraphs 12 to 20 of the Order of the Hon'ble Supreme Court is being reproduced as hereunder:

"12. The expression 'insolvency resolution costs' has been defined in Section 5(13) of the IBC in the following terms:

"(13) "insolvency resolution process costs" means-

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;

(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and

(e) any other costs as may be specified by the Board;"

13. Regulation 31 of the IP Regulations is contained in Chapter 9, which is titled "Insolvency Resolution Process Costs'. Regulation 31 is in the following terms:

'31. Insolvency resolution process costs.- "Insolvency resolution process costs" under Section 5(13) (e) shall mean-

(a) amounts due to suppliers of essential goods and services under Regulation 32;

(aa) fee payable to authorized representative under sub-regulation (7) of regulation 16A;

(ab) out of pocket expenses of authorized representative for discharge of his functions under section 25A;

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(c) expenses incurred on or by the resolution professional to the extent ratified under regulation 33;

(d) expenses incurred on or by the resolution professional fixed under regulation 34; and

(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee."

14. *Of the clauses of Regulation 31, of particular importance to the present case is clause (c) which enunciates expenses incurred on or by the IP to the extent ratified under Regulation 33. Clause (e) refers to other costs directly relating to the CIRP and approved by the CoC. Regulation 33 provides for the costs of the IRP:*

"33. Costs of the interim resolution professional.-

(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

Explanation.- For the purposes of this regulation, "expenses" include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional."

15. *"Resolution professional costs" are defined in Regulation 34:*

"34. Resolution professional costs.- The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

Explanation.- For the purposes of this regulation, "expenses" include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to

be paid to professionals, if any, and other expenses to be incurred by the resolution professional."

16. *Where an application for withdrawal is filed under Section 12A of the IBC, a provision has been made in Regulation 30A(7) in regard to the deposit of expenses. Regulation 30A (7) provides as follows:*

"30A. Withdrawal of application.

(...]

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code."

17. *Clause 2 of Regulation 30A, which is referred to in clause 7, is as follows:*

(2) The application under sub-regulation (1) shall be made in form-FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (a), (ab). (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1)."

18. *Regulation 30(A) would not apply specifically to the present situation, since it deals with a case where an application is withdrawn under Section 12A of the IBC.*

The appellant is justified in contending that there must be a forum within the ambit and purview of the IBC which has the jurisdiction to make a determination on a claim of the present nature, which has been instituted by a valuer who was appointed in pursuance of the initiation of the CIRP by the RP. After the NCLAT set aside the CIRP and remitted the proceedings to the NCLT to decide on the CIRP costs, the NCLT held that it was rendered functus officio in relation to the appellant's claim. This, in our view, would be an incorrect reading of the jurisdiction of the NCLT as an Adjudicating Authority under the IBC. In a recent judgment in Gujarat Urja Vikas Nigam Limited vs Amit Gupta and Others, this Court clarified the jurisdiction of the NCLT/NCLAT under Section 60(5)(c) of the IBC in the following terms:

"71. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora...Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist."

19. Though the CIRP was set aside later, the claim of the appellant as registered valuer related to the period when he was discharging his functions as a registered valuer appointed as an incident of the CIRP. The NCLT would have been justified in exercising its jurisdiction under Section 60(5) (c) of the IBC and, in exercise of our jurisdiction under Article 142 of the Constitution, we accordingly order and direct that in a situation such as the present case, the Adjudicating Authority is sufficiently empowered under Section 60(5)(c) of the IBC to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs. Regulation 34 of the IRP Regulations defines "insolvency resolution process cost" to include the fees of other professionals appointed by the RP.

Whether any work has been done as claimed and if so, the nature of the work done by the valuer is something which need not detain this Court, since it is purely a factual matter to be assessed by the Adjudicating Authority.

20. The NCLT in its order dated 29 June 2020, while dismissing the application of the appellant for the payment of fees, observed that the Insolvency and Bankruptcy Board of India ("IBBI") is the competent authority to deal with allegations against the P relating to their failure to discharge statutory duties (paragraph 7). Section 217 of the IBC empowers a person aggrieved by the functioning of an RP to file a complaint to the IBBI. If the IBBI believes on the receipt of the complaint that any RP has contravened the provisions of IBC, or the rules, regulations or directions issued by the IBBI, it can, under Section 218 of the IBC, direct an inspection or investigation. Under Section 220 of the IBC. IBBI can constitute a disciplinary committee to consider the report submitted by the investigating authority. If the disciplinary committee is satisfied that sufficient cause exists, it can impose a penalty. The availability of a grievance redressal mechanism under the IBC against an insolvency professional does not divest the NCLT of its jurisdiction under Section 60(5)(c) of the IBC to consider the amount payable to the appellant. In any event, the purpose of such a grievance redressal mechanism is to penalize errant conduct of the RP and not to determine the claims of other professionals which form part of the CIRP costs."

7. In the instant case, vide Order dated 05.07.2018 in CA 428(PB)/2018, the Adjudicating Authority on an Application preferred by the IRP/RP/Appellant herein has directed the CoC to fix the fee of the RP within two weeks.

8. Vide Order dated 11.02.2019 in CA 1208(PB)/2018 which is an Application preferred by the Appellant herein aggrieved by the sum of Rs.40,000/- p.m. fixed as fee, the Adjudicating Authority ordered as follows:

“CA-1208(PB)/2018

It has been brought to our notice that the applicant-IRP Reeta Gupta has to be paid Rs. 40,000/- per month. In

her place the new RP has been engaged for a fee of Rs. 16,00,000/- per month. The Resolution Professional is directed to consider the fee of the applicant and take a reasonable/rational decision at the earliest.”

9. At this juncture, this Tribunal is of the considered view that the question which mainly arises in this Appeal is whether the Liquidator is having the jurisdiction to decide the fee of the RP as the CoC is no longer in existence. By virtue of Section 5(13)(e) of the Code, the fees and expenses incurred by the Appellant comes under the ambit of Insolvency Resolution Process Cost and therefore in the instant matter we are of the view that the Liquidator cannot adjudicate upon the Insolvency Resolution Process Cost. Regulation 34 of the IBBI Regulations specifies that the CoC shall fix the expenses which are incurred by the Resolution Professional. The word **‘expenses’** includes the fee to be paid to the Resolution Professional. Viewed from any angle, the fees of an RP cannot be considered to be a ‘Claim’ as defined under Section 3(6) of the Code. The Liquidator can only verify and adjudicate the ‘Claims’ as defined under the Code. Since the amount of fees payable to an RP is not a ‘Claim’, the same cannot be determined or verified by Liquidator.

10. The contentions of the Respondent that the IBBI in their Inspection Report has passed strictures against the Appellant and has suspended the Appellant from practicing for a period of 1 year cannot be a factor for considering the ‘fee’ to be paid to the Appellant. The Hon’ble Supreme Court in **‘Alok Kaushik’ (Supra)** in para 20 has clearly distinguished the fees to be paid to a professional from the ‘penalty which can be imposed if a disciplinary committee is satisfied that sufficient cause exists’. The Hon’ble Apex Court has observed that the availability of a grievance redressal mechanism under

the Code against an Insolvency professional does not divest the Adjudicating Authority of its jurisdiction under Section 60(5)(e) of the Code to consider the amount payable to the Appellant. In any event, the purpose of such a grievance redressal mechanism is to penalize errant conduct of the RP and not to determine the 'Claims' of other professionals which form part of the CIRP costs. Therefore, we are of the view that the contention of the Respondent that there is a nexus between the IBBI Report and the fees to be paid to the RP, is untenable.

11. It is the main case of the Appellant that for the Meeting scheduled on 13.07.2018, wherein the agenda of fixing of the fee of the Appellant was included, a Notice vide email dated 11.07.2018 was given to her at a belated hour and due to personal difficulty, she could not attend the Meeting. In the very same Meeting, the fee was fixed at Rs.40,000/- p.m. It is the case of the Appellant that this amount is arbitrary as the fees of the replaced RP is Rs.16,00,000/- p.m. Be that as it may, this Tribunal *is not delving into the quantum of fees* to be paid to the RP/IRP but only observe that when the Adjudicating Authority vide Order dated 11.02.2019 has directed the CoC to 'reconsider the fees' and in the meantime, the Company has gone to Liquidation, a 'Claim' cannot be preferred by the RP before the Liquidator. Keeping in view the factual matrix of the attendant case, we are of the view that the Adjudicating Authority is empowered under the provisions of Section 60(5) of the Code read with Regulation 33(2) of the CIRP Regulations to fix the fees payable to the Resolution Professional, as pursuant to its directions on 11.02.2019, there was no decision taken. We are of the considered view that the Adjudicating Authority shall take into consideration the facts of the

attendant case together with the orders of this Tribunal, by which Order, the RP had continued performing her duties and decide the fees as expeditiously as practicable but not later than 4 weeks from the date of this Order and shall proceed in accordance with law. It is reiterated that we refrain from making any observations regarding the quantum of the fees, or whether the refund sought for is justifiable or not.

12. For all the aforementioned reasons, we are of the considered view that it is Adjudicating Authority which has to decide fees in the absence of a CoC and the RP cannot be directed to prefer a 'Claim' before the Liquidator. Hence, we allow this Appeal and the Impugned Order is set aside and the matter is remanded back to the Learned Adjudicating Authority. No order as to costs.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

**NEW DELHI
01st August, 2022**
Himanshu